

191—48.3(508E) License requirements.

48.3(1) *Viatical settlement provider.* A person shall not operate as a viatical settlement provider without first obtaining a license from the commissioner of the state of residence of the viator.

a. Upon the filing of an application in the format prescribed by the commissioner and the payment of an application fee in the amount of \$100 and the costs of an initial examination, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(1) Has provided a detailed plan of operation, which includes details of the proposed operation in this state;

(2) Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement provider;

(3) Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement provider;

(4) If a legal entity, has provided proof of licensure and a certificate of good standing from the state of its domicile;

(5) Has provided either:

1. A copy of the current year's audited financial statement, and a copy of audited financial statements for each of the previous five years; or

2. At the commissioner's discretion, a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person, and unaudited financial statements from the provider for the current year and each of the previous five years;

(6) Maintains books and records in compliance with generally accepted accounting principles;

(7) Has provided proof of a fidelity bond on each officer and director in the amount of \$100,000 issued by an insurance carrier rated with one of the four highest categories by A.M. Best, or a comparable rating by another rating agency;

(8) Has provided business character reports for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant;

(9) Has provided the initial viatical settlement contracts and disclosure statements for approval and such contracts and statements have been approved;

(10) Has provided information regarding the identity of the escrow agent to be used; and

(11) Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement provider in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses.

b. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this rule.

c. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule.

48.3(2) *Viatical settlement broker.* Effective July 1, 2002, a person shall not operate as a viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. Upon the filing of an application in the format prescribed by the commissioner and the payment of an application fee in the amount of \$100, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

a. Has passed the test required by the commissioner or has taken and passed a test on viatical and life settlement contracts required by another state insurance department;

b. Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement broker;

c. Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement broker;

d. Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement broker in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses; and

e. Has provided proof that the applicant is covered by an errors and omissions policy for an amount of not less than \$100,000 liability per occurrence and not less than \$100,000 total annual aggregate for all claims during the policy period.

In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule.

48.3(3) *Governing law where viators are residents of different states.* For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a substantially similar statute or rule to Iowa Code chapter 508E and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

48.3(4) *Commissioner to be used for service of process.* The commissioner shall not issue a license to an applicant unless either a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

48.3(5) *License term.*

a. A viatical settlement provider or viatical settlement broker who meets the requirements of this rule, unless otherwise denied licensure pursuant to rule 48.12(508E), shall be issued a license.

b. A viatical settlement provider license is valid for one year and automatically terminates on March 31 of the renewal year unless renewed pursuant to subrule 48.3(6).

c. A viatical settlement broker license is valid for three years and automatically terminates on March 31 of the renewal year unless renewed pursuant to subrule 48.3(6).

d. A viatical settlement provider license or a viatical settlement broker license may remain in effect for the term of the license, unless revoked or suspended, as long as all required fees are paid in the time prescribed by the commissioner.

e. The license issued to a viatical settlement provider or viatical settlement broker shall be a limited license that allows the licensee to operate only within the scope of its license.

48.3(6) *Continuing education for viatical settlement broker.*

a. A viatical settlement broker licensed as a viatical settlement broker shall complete 36 credits of approved continuing education during each license term as set forth in paragraph 48.3(5) "c." Viatical settlement broker continuing education courses will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. A viatical settlement broker who successfully completes the examination for a viatical settlement broker license will be deemed to have completed sufficient continuing education for the license term in which the viatical settlement broker completed the examination.

b. The required continuing education credits shall include a minimum of:

- (1) Eighteen credits in life insurance;
- (2) Fifteen credits in viaticals; and
- (3) Three credits in ethics.

c. The viatical settlement broker may submit the same completed credits to the division both to meet continuing education requirements for the viatical settlement broker license and to meet the continuing education requirements for an applicable insurance producer license.

d. The license of a viatical settlement broker who fails to comply with this continuing education requirement shall terminate.

e. An instructor of an approved continuing education course shall be granted the same credit as a student who completes the continuing education course, and the instructor may receive such credit once during a license term.

f. A viatical settlement broker cannot carry over from one license term to the next continuing education credits earned in excess of the viatical settlement broker's license term requirements.

g. A viatical settlement broker may receive continuing education credit for self-study courses. A self-study course is considered completed when the continuing education provider receives the completed examination from the viatical settlement broker.

(1) A viatical settlement broker may receive continuing education credit for self-study courses that are part of a recognized national designation program as described in 191—subrule 11.5(5).

(2) A viatical settlement broker may receive continuing education credits for self-study courses that do not meet the requirement of subparagraph (1) if the viatical settlement broker:

1. Submits an affidavit to the continuing education provider that the examination was independently proctored and was completed without any outside assistance, and

2. Correctly answers at least 70 percent of the questions presented.

h. A viatical settlement broker shall not receive continuing education credit for courses taken prior to the issuance of an initial license.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one license term. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. A viatical settlement broker may elect to comply with the continuing education requirements by taking and passing the viatical settlement broker licensing examination.

k. A viatical settlement broker shall demonstrate compliance with the continuing education requirements at the time of license renewal. A viatical settlement broker shall maintain a record of all continuing education courses completed by keeping the original certificates of completion for four years after the end of the year of course completion.

l. For purposes of rule 191—48.3(508E), “credit” means continuing education credit. One credit is 50 minutes of instruction or reading material in an acceptable topic.

48.3(7) License renewal. A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of \$100 within the time prescribed by the commissioner and by demonstration that the viatical settlement provider continues to meet the requirements of subrule 48.3(1) and has provided the reports required by rule 48.6(508E). If renewal is approved, the license will be renewed effective March 31 of the renewal year, will be valid for one year, and will automatically terminate on March 31 of the following renewal year unless renewed pursuant to this subrule.

b. A viatical settlement broker license may be renewed by demonstration of completion of continuing education as required in subrule 48.3(6) and payment of \$100. If renewal is approved, the license will be renewed effective March 31 of the renewal year, will be valid for three years, and will automatically terminate on March 31 of the following renewal year unless renewed pursuant to subrule 48.3(7).

c. If a viatical settlement provider or viatical settlement broker fails to pay the renewal fee within the time prescribed, or a viatical settlement provider fails either to meet the requirements of subrule 48.3(1) or to submit the reports required in rule 48.6(508E), such nonpayment or failure shall result in lapse of the license.

d. A licensed viatical settlement broker who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request from the commissioner a waiver of renewal procedures. Such viatical settlement broker may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

48.3(8) *Duty to notify commissioner of cessation of business in the state.* If a viatical settlement provider intends to cease business in Iowa, it must notify the commissioner of those intentions and of its plan of operation for such cessation at least 180 days before the cessation shall occur. This requirement ensures that servicing of the viatical settlement investment contracts continues and all current business can be completed. This requirement is not meant to imply that a company must continue to accept new viatical or life settlement business during the 180-day period.

48.3(9) *Duty to notify commissioner of changes.*

a. A viatical settlement provider shall provide to the commissioner any new or revised information about officers, stockholders holding 10 percent or more of the stock of the company, partners, directors, members or designated employees within 30 days of the date the addition or revision occurred.

b. A viatical settlement provider or viatical settlement broker shall inform the commissioner in writing of any change of name or address within 30 days of the date of such change. In addition, a viatical settlement provider shall provide the commissioner with 30 days' notice of the cancellation or nonrenewal of a fidelity bond required for licensure under subrule 48.3(1) and the name of the carrier that will be providing coverage subsequent to such cancellation or nonrenewal.

c. A viatical settlement provider or viatical settlement broker shall report to the commissioner any administrative action taken against the viatical settlement provider or viatical settlement broker in another state or federal jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, or other relevant legal documents. Within 30 days of the initial pretrial hearing date, a viatical settlement provider or viatical settlement broker shall report to the commissioner any criminal prosecution of the viatical settlement provider or viatical settlement broker taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

48.3(10) *Commissioner may use outside assistance.* In order to assist with the commissioner's duties, the commissioner may contract with a nongovernmental entity, including, but not limited to, the National Association of Insurance Commissioners (NAIC) or any affiliate or subsidiary the NAIC oversees, to perform any ministerial functions related to licensing of viatical settlement providers or viatical settlement brokers that the commissioner deems appropriate including, but not limited to, the collection of fees.